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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
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COMMERCE COMMISSION

2008 FEB 27 A 9:22

IN RE: ENBRIDGE PIPELINE
ILLINOIS LLC.

CHIEF CLERK'S OFFICE

07-0446

Petition pursuant to Section 8-406, 8-503,
8-509, 13-403, 13-404, 13-405, 15-101, 15-401,
16-108, 16-115, 19-110, 21-401, of the Public
Utilities Act for a certificate by pipeline, and
for entry of an order authorizing and
directing construction and operation of
a petroleum pipeline and granting authority
to exercise eminent domain.

Verified Application For Issuance Of A Subpoena Duces Tecum

Intervenors, Pleasant Murphy and the Village of Downs, Illinois, a municipal corporation and body politic by the Law Office of Mercer Turner, P.C., pursuant to 83 Ill. Admin. Code § 200.380, moves The Honorable Larry Jones, Administrative Law Judge, this Honorable Commission, or any single member of this Honorable Commission for the issuance of a subpoena duces tectum, in the form provided herewith, respectfully requesting the production of certain records from ExxonMobil Pipeline Company at the Law Office of Mercer Turner, 202 N. Prospect Road, Suite 202, Bloomington, IL 61704. The address of the ExxonMobil Pipeline Company in the State of Illinois is 801 Adlai Stevenson Drive, Springfield, IL 62703. The records respectfully requested are:

Clydesdale Pipeline Documents

All documents relating to, supporting, discussing or evidencing the announced Texas Access Pipeline from Patoka, Illinois to the Texas Gulf Coast. All documents containing any understanding, agreement, or arrangement made by ExxonMobil Pipeline Company

in regard to the announced Texas Access Pipeline from Patoka, Illinois to the Texas Gulf Coast. All documents relating to, supporting, discussing, or evidencing a public need, necessity or benefit for the announced Texas Access Pipeline, including any public need, necessity, or benefit to Illinois. All documents relating to, supporting, discussing, or evidencing any contingency which would prevent the construction of the announced Texas Access Pipeline based on the outcome of the Illinois Commerce Commission decision in the Application of Enbridge Pipeline Illinois, LLC in case 07-0446. All documents relating to, supporting, discussing, or evidencing any relationship between the announced Texas Access Pipeline to the proposed pipeline which is the subject matter of the Application of Enbridge Illinois, LLC before the Illinois Commerce Commission in case 07-0446. All documents relating to, supporting, discussing, or evidencing any relationship, understanding, or agreement regarding the proposed pipeline which is the subject matter of the Application of Enbridge Pipeline Illinois, LLC and the access of any and all ExxonMobil refineries domestically or internationally to the enriched liquefied bitumen from Alberta, Canada through the Texas Access Pipeline. All documents relating to, supporting, discussing, or evidencing any relationship, understanding, or agreement to export from the U.S. or to participate in any fashion with the exportation from the U.S. of any of the enriched liquefied bitumen from Alberta, Canada after transportation through the Texas Access Pipeline. All documents relating to, supporting, discussing, or evidencing any relationship, understanding, or agreement to export either or both the enriched liquefied bitumen from Alberta, Canada and the refined products from the enriched liquefied bitumen from Alberta, Canada after transportation through the Texas Access Pipeline. All documents relating to, supporting, discussing, or

evidencing any relationship, understanding, or agreement which would give ExxonMobil Pipeline Company a market advantage with either the completion of the proposed pipeline which is the subject matter of the Application of Enbridge Pipeline Illinois, LLC before the Illinois Commerce Commission in case 07-0446 and/or the completion of the announced Texas Access Pipeline. All documents relating to, supporting, discussing, or evidencing any reduction in the price of refined petroleum products in the United States at any location as a result of the completion of the proposed pipeline which is the subject matter of the Application of Enbridge Pipeline, LLC before the Illinois Commerce Commission and/or the announced Texas Access Pipeline. All documents relating to, supporting, discussing, or evidencing whether the Texas Access Pipeline is proposing to connect directly to the Enbridge storage and pumping facilities at Patoka, Illinois or the ExxonMobil Pipeline storage and pumping facilities at Patoka, Illinois. All documents stated above and all documents relating to, supporting, discussing, or evidencing any of the documents stated above within the control of any parent, affiliate, or related party of ExxonMobil Pipeline Company.

In support of the verified application for the issuance of a subpoena duces tectum,

Intervenors Pleasant Murphy and the Village of Downs state as follows:

1. Admin. Code Section 200.380 (a) empowers the Administrative Law Judge, a Commissioner, or the Commission to order the issuance of a subpoena.
2. Both Pleasant Murphy and the Village of Downs, Illinois are parties in the matter. Exxon Mobil Pipeline Company is not a party in this matter but has a clear and present presence in Illinois.

3. In this verified applications for the issuance of a subpoena duces tecum the requirements set forth in subsection (c) of Section 200.380 are fully addressed,

namely:

- a) a showing that the subpoena is reasonably required,
- b) for information,
- c) not reasonably available from requests for information or other discovery.

- d) for purposes of determining whether the proposed pipeline has a public or private purpose and to what degree either may exist.

4. As recent as July 16, 2006 The Applicant Enbridge Pipeline Illinois, LLC or one of its affiliates has publicly announced establishing a crude oil pipeline from Alberta, Canada to the Texas Gulf Coast. Please see quotation from Richard Bird, an Enbridge Executive Vice President Contained in Exhibit A hereto.

5. The Texas Access Pipeline has a pet name in the industry---the Clydesdale. Please see Exhibit B quotation from Pat Daniels dated February 19, 2008. Also in Exhibit B is an Internet announcement regarding the Clydesdale which links directly to the Internet home page of ExxonMobil Pipeline Company.

6. Jointly the Applicant Enbridge Pipeline Illinois, LLC and ExxonMobil Pipeline Company on December 19, 2007 commenced Open Season for the Clydesdale. Please see Exhibit C.

7. As late as February 4, 2008, the Applicant Enbridge Pipeline Illinois, LLC asserted under oath in its testimony before the Illinois Commerce Commission in case 07-0446 that the Clydesdale Pipeline is not committed and has no adverse pertinence to the merits of whether a certificate of good-standing should be

awarded. Please see Burgess February 4, 2008 testimony excerpts contained in Exhibit D hereto.

8. For a certificate of good standing to issue “in whole or in part”, Illinois statute, 220 ILCS 5/15-401 requires a finding of all three of the following elements, among other things:

- a) an existing need for the proposed pipeline; and
- b) a public convenience; and
- c) a public necessity.

9. Case law which is both legally and factually pertinent to the meaning of the public interest tests contained on 220 ILCS 5/15-401 requires more than a benefit to a limited number of private interests. Lakehead Pipeline Company, Limited Partnership v. Illinois Commerce Commission, et al., 296 Ill. App.3d 942, 696 N.E.2d 345 (3rd Dist.1989) An alleged benefit to a component of the industrial public, such as ExxonMobil Pipeline Company, must be reviewed in order to see just how widely dispersed any other benefit to any other portion of the public may be, if at all. A concentration of benefits in one or all industrial components, to the exclusion of the balance of the public, would weaken any argument for:

- a) a public need and
- b) a public benefit, and
- c) a public necessity.

A concentration of an alleged benefit in a private industrial group would certainly justify the denial of the power of eminent domain to the Applicant Enbridge

Pipeline Illinois, LLC since a “certificate” may be issued “in part”, i.e.) without eminent domain (220 ILCS 5/16-401) and the concentration of benefit would defeat a bona fide public purpose.

10. It is undisputed that the enriched liquid bitumen which is the purported liquid for the common carriage by pipeline in the instant case is already transported by Enbridge pipelines to both Patoka, Illinois and Cushing, Oklahoma, is presently available to both substantial industrial components in Illinois, the upper Midwest, the Midwest, and those industrial components distantly removed from Illinois, including the Texas Gulf Coast. Please see Exhibit E hereto.

11. There is also an admission in its testimony that the proposed pipeline at issue is unnecessary for the enriched liquid bitumen to reach the marketplace. It is worthy to note that the use of the description “undisputable” is not the result of cross-examination, but rather the voluntary judicial admission of carefully planned testimony of a highly ranking Enbridge official. Please see additional excerpts of Burgess testimony in Exhibit F hereto. Also in Exhibit F is the National Energy Board’s June 2006 Assessment, Chapter 5, which explains a rapid expansion of competition.

12. There is also a nexus between the Applicant Enbridge Pipeline Illinois, LLC (and its affiliates) and ExxonMobil Pipeline Company (and its affiliates) which creates concern. Whether the purpose behind the pipeline at issue is for a private benefit must be considered. The Canadian Association of Petroleum Producers March 2007 Canadian Oil Sands Outlook report discloses that the

ExxonMobil subsidiary Imperial Oil, Ltd. has the potential to produce 480,000 barrels of enriched liquid bitumen per day with two different processes—mining and heating. Please see Exhibit G. Imperial also owns 25% of the Syncrude plant which has the potential to produce 600,000 barrels of enriched liquid bitumen. Please see Exhibit G hereto. Enbridge and ExxonMobil are partners owning and operating the Mustang Pipeline between Chicago and Patoka, Illinois which presently carries Canadian enriched liquid bitumen to the ExxonMobil Tank Farm in Patoka, Illinois. Please see Exhibit G. **(It should parenthetically be noted that Enbridge is also a partner of B.P. Pipelines (North America) which has a crude oil pipeline between Chicago and Patoka, Illinois which runs along the eastern edge of Mclean County, Illinois, as described also in Exhibit G, which seems like the logical location for a collinear crude oil pipeline since it would be distant from the City of Bloomington, the Eastside Access Highway, the City of Bloomington water supply, and the Mackinaw River.)** The Clydesdale Pipeline will be in an ExxonMobil easement. Please see Exhibit G. As late as February 21, 2008, Enbridge announced that the Gateway Pipeline will receive Canadian regulatory approval. Please see Exhibit G. Gateway Pipeline is for purposes of serving primarily China and others in Asia. Please see Exhibit G. ExxonMobil has a clear and present presence in Asia. Please see Exhibit G. ExxonMobil is an Enbridge top ten mainline shipper, being listed as number three. Please see Exhibit G. However, number four is Imperial Oil, Ltd. All of these connections suggest that ExxonMobil is more than a platonic dinner companion of Enbridge. Indeed, ExxonMobil has perhaps more to gain from the

increased price of enriched liquid bitumen than any other company, country, or public sector. Enbridge President and Chief Executive Officer, Pat Daniels, states that the Clydesdale Pipeline alone will make enriched liquid bitumen prices at least 1.5 billion dollars a year higher. See Exhibit G. ExxonMobil Pipeline Company is certainly so closely connected to the Applicant Enbridge to warrant an examination of their relationship. If ExxonMobil is the dominant benefactor of the proposed pipeline, then for good and just reasons the Illinois Commerce Commission should then deny eminent domain.

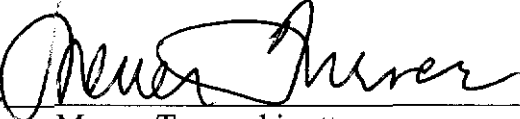
13. Enbridge has filed recent testimony which directly states that the Patoka, Illinois Hub is currently inconsequential because most of the crude oil flows in a direction other than south to the Texas Gulf Coast. Please see Burgess testimony excerpts attached hereto as Exhibit H.

14. The documents sought may only be in the possession of the ExxonMobil Pipeline Company as admitted again in Enbridge testimony (Exhibit J). And so all of the elements of 83 Ill. Admin. Code Section 200.380 are well established by this Application for a Subpoena Duces Tecum, particularly a showing that a subpoena is reasonably required to examine the merits of an alleged public benefit and that the documents cannot be obtained through requests for information to the Applicant Enbridge Pipeline Illinois, LLC.

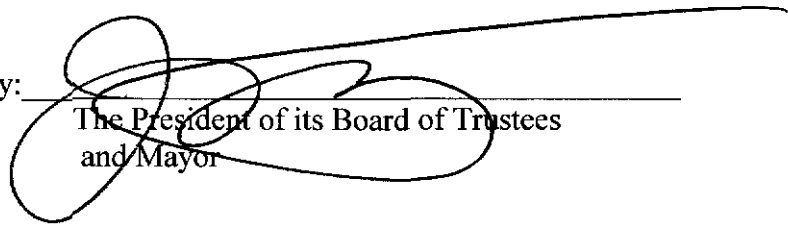
Wherefore, the applicants Pleasant Murphy and the Village of Downs respectfully requests the issuance of a subpoena tecum as sought herein.

Respectfully Submitted,

Pleasant Murphy, Intervenor

By: 
Mercer Turner, his attorney

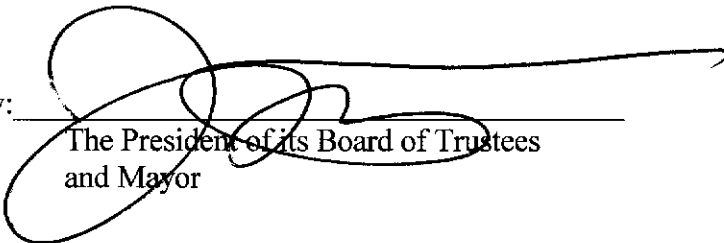
The Village of Downs, Illinois

By: 
The President of its Board of Trustees
and Mayor

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF McLEAN) SS

Jeff Schwartz, upon his oath being first duly sworn, states that he is the President of the Board of Trustees and Mayor of the Village of Downs, and is authorized to make this verification on behalf of the Village of Downs. Affiant has read the foregoing Application, is familiar with the facts stated therein, and the same are true and corrected to the best of affiant's information, knowledge and belief.

By: 
The President of its Board of Trustees
and Mayor

Subscribed and sworn to me this 25th day of February 2008.

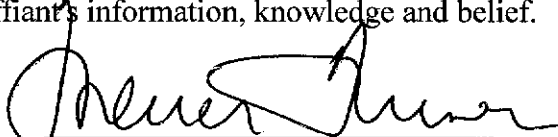



Notary Public

VERIFICATION

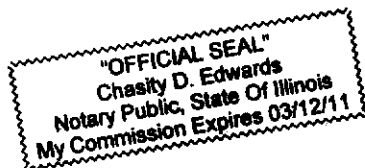
STATE OF ILLINOIS)
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COUNTY OF McLEAN) SS

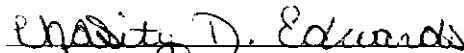
Mercer Turner, upon his oath being first duly sworn, states that he is the attorney for the aforesaid intervenor, Pleasant Murphy, and is authorized to make this verification on his behalf. Affiant has read the foregoing Motion, is familiar with the facts stated therein, and the same are true and corrected to the best of affiant's information, knowledge and belief.



Mercer Turner

Subscribed and sworn to me this 25th day of February 2008.





Notary Public